IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINETEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

-

WRIT PETITION NO : 14277 of 2004

Between:

P.K.Gangadharam, S/o Narayana Kurup,
Sheebu Tea Corner, D.No.11-16-3, Beside Sudhakar Hotel,
Radham Centre, K.G.Market, Vijayawada

..... PETITIONER

AND

1 The Superintending Engineer, Operation Circel, A.P.Southern Power

Distribution Co.Ltd, Vijayawada
2 The Divisional Engineer, Assessment Division, A.P.Southern Power

Distribution Co.Ltd. Near P.W.D.Grounds, Vijayawada - 520 002
3 The Assistant Divisional Engineer, A.P.Southern Power Distribution Co.Ltd
Distribution-I, Vijayawada

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any Writ, Order or direction particularly a writ in the nature of Mandamus by declaring the action of the respondents herein to disconnect the supply of energy to the S.C.No.34056-15604, Door No.11-16-3, of the petitioner herein as illegal, arbitrary and unconstitutional.

Counsel for the Petitioner: MR.Y.SUBRAHMANYAM

Counsel for the Respondents: MR.KANAKAMEDALA RAVINDRA KUMAR

The Court made the following:

ORDER:

The petitioner claims to be the lessee in respect of a single room portion belonging to one Sri S.R.Kotaiah, wherein he is running a tea stall. The said premises is provided with electricity connection bearing Service Connection No.34056/15604 category No.II. The petitioner states that he has been regularly paying the energy consumption charges and there are absolutely no arrears. However, the third respondent issued the impugned notice, dated 30.03.2004 stating that the Additional Assistant Engineer, K.G. Market inspected the petitioner's premises on 29-03-2004 and it was found that the meter was not rotating on consumers load and that the incoming service wire was connected to a switch in the switch board and that the past record of consumption disclosed that the consumption being recorded by the meter is unduly low which prima facie indicates that the petitioner is guilty of pilferage. The value of the energy misused has been provisionally estimated at Rs.37,541/-. The electricity supply to the petitioner's shop was disconnected and the petitioner was called upon to pay a sum of Rs.18,771/- being half of the estimated value, if the petitioner is desirous of restoration of power supply, pending enquiry. It is also stated that an enquiry will be made into the matter by the Divisional Engineer, Assessments, Vijayawada, who will fix the amount of loss sustained by the company and the petitioner may make appropriate representation to him in that regard within 30 days.

The impugned notice has been challenged by the petitioner

mainly on the ground that he has not been afforded any opportunity before issuing the impugned notice. It is also contended that all the allegations made in the impugned notice, are false and baseless and at any rate the disconnection of electricity supply at this stage is contrary to law.

A perusal of the impugned notice shows that no opportunity was afforded to the petitioner to explain the allegations. The said fact has also not been disputed by the learned counsel for the respondents. It is also relevant to note that the inspection has taken place after the Electricity Act, 2003 has come into force. While interpreting the provisions under the said Act, the Division Bench in W.A.Nos.452 & 477 of 2004 dated 11-03-2004 held that there is no authority to disconnect the power supply while issuing a provisional assessment or to call upon the consumer to pay even part of the provisional assessment amount till the final assessment is made. In the circumstances, the impugned notice cannot be sustained.

Accordingly, the writ petition is disposed of permitting the petitioner to submit his explanation treating the impugned notice as show-cause notice. Such explanation shall be filed within two weeks from today, in which event, the Divisional Engineer, Assessments, Vijayawada, shall conduct due enquiry and pass appropriate orders with regard to the liability of the petitioner under the impugned notice. There shall be a further direction to the respondents to restore the power supply to the petitioner's premises forthwith and not to take any coercive steps against the petitioner with regard to the impugned notice till the enquiry is completed and appropriate orders are passed by the Divisional Engineer.

Accordingly, the writ petition is disposed of. No costs.

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19.08.2004

Note: Furnish CC in two days.

(b/o)

VGB

To

1 The Superintending Engineer, Operation Circel, A.P.Southern Power

Distribution Co.Ltd, Vijayawada

2 The Divisional Engineer, Assessment Division, A.P.Southern Power

Distribution Co.Ltd. Near P.W.D.Grounds, Vijayawada - 520 002

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